
By: **Delegate Menes (Special Committee on Drug and Alcohol Abuse) and Delegates Anderson, Boschert, Bronrott, Burns, Dumais, Eckardt, Hennessy, Kelley, Nathan-Pulliam, and Petzold**

Introduced and read first time: January 28, 2004
Assigned to: Judiciary

Committee Report: Favorable with amendments
House action: Adopted
Read second time: February 24, 2004

CHAPTER _____

1 AN ACT concerning

2 **Probation before Judgment - ~~Driving While Impaired by or under the~~**
3 **~~Influence of Alcohol and Drugs - Evaluation Required~~ Alcohol- or**
4 **Drug-Related Offenses - Evaluation**

5 FOR the purpose of ~~requiring~~ authorizing a court, before imposing a period of
6 probation ~~before judgment~~ in a case where judgment is being stayed for certain
7 alcohol- or drug-related ~~driving~~ offenses, to order the Department of Health
8 and Mental Hygiene to evaluate the defendant as to whether the defendant
9 needs or would benefit from certain treatment; requiring the court to review the
10 evaluation ~~prior to~~ before imposing a period of probation; and generally relating
11 to probation before judgment ~~in cases involving driving while impaired by or~~
12 ~~under the influence of alcohol and drugs~~ for certain alcohol- or drug-related
13 offenses.

14 BY repealing and reenacting, with amendments,
15 Article - Criminal Procedure
16 Section 6-220
17 Annotated Code of Maryland
18 (2001 Volume and 2003 Supplement)

19 BY repealing and reenacting, without amendments,
20 Article - Transportation
21 Section 21-902
22 Annotated Code of Maryland
23 (2002 Replacement Volume and 2003 Supplement)

1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article - Criminal Procedure**

4 6-220.

5 (a) In this section, "custodial confinement" means:

6 (1) home detention;

7 (2) a corrections options program established under law which requires
8 the individual to participate in home detention, inpatient treatment, or other similar
9 program involving terms and conditions that constitute the equivalent of
10 confinement; or

11 (3) inpatient drug or alcohol treatment.

12 (b) (1) When a defendant pleads guilty or nolo contendere or is found guilty
13 of a crime, a court may stay the entering of judgment, defer further proceedings, and
14 place the defendant on probation subject to reasonable conditions if:

15 (i) the court finds that the best interests of the defendant and the
16 public welfare would be served; and

17 (ii) the defendant gives written consent after determination of guilt
18 or acceptance of a nolo contendere plea.

19 (2) Subject to paragraphs (3) and (4) of this subsection, the conditions
20 may include an order that the defendant:

21 (i) pay a fine or monetary penalty to the State or make restitution;
22 or

23 (ii) participate in a rehabilitation program, the parks program, or a
24 voluntary hospital program.

25 (3) Before the court orders a fine, monetary penalty, or restitution, the
26 defendant is entitled to notice and a hearing to determine the amount of the fine,
27 monetary penalty, or restitution, what payment will be required, and how payment
28 will be made.

29 (4) Any fine or monetary penalty imposed as a condition of probation
30 shall be within the amount set by law for a violation resulting in conviction.

31 (5) As a condition of probation, the court may order a person to a term of
32 custodial confinement or imprisonment.

1 (c) (1) When the crime for which the judgment is being stayed is for a
2 violation of § 21-902 of the Transportation Article or § 2-503, § 2-504, § 2-505, §
3 2-506, or § 3-211 of the Criminal Law Article, the court ~~shall~~ [impose]:

4 (I) ~~PRIOR TO BEFORE~~ IMPOSING a period of probation, MAY ORDER
5 THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE TO EVALUATE THE
6 DEFENDANT IN ACCORDANCE WITH § 8-505 OF THE HEALTH - GENERAL ARTICLE;
7 ~~AND~~

8 (II) ~~AFTER REVIEW OF THE EVALUATION IF AN EVALUATION WAS~~
9 ORDERED UNDER ITEM (I) OF THIS PARAGRAPH, SHALL REVIEW THE EVALUATION
10 BEFORE IMPOSING A PERIOD OF PROBATION; AND

11 (III) SHALL IMPOSE A PERIOD OF PROBATION and, as a condition of
12 the probation:

13 [(i)] 1. shall require the defendant to participate in an alcohol or
14 drug treatment or education program approved by the Department of Health and
15 Mental Hygiene, unless the court finds and states on the record that the interests of
16 the defendant and the public do not require the imposition of this condition; and

17 [(ii)] 2. may prohibit the defendant from operating a motor vehicle
18 unless the motor vehicle is equipped with an ignition interlock system under § 27-107
19 of the Transportation Article.

20 (2) When the crime for which the judgment is being stayed is for a
21 violation of any provision of Title 5 of the Criminal Law Article, the court shall impose
22 a period of probation and, as a condition of probation, require the defendant to
23 participate in a drug treatment or education program approved by the Department of
24 Health and Mental Hygiene, unless the court finds and states on the record that the
25 interests of the defendant and the public do not require the imposition of this
26 condition.

27 (d) Notwithstanding subsections (b) and (c) of this section, a court may not
28 stay the entering of judgment and place a defendant on probation for:

29 (1) a violation of § 21-902 of the Transportation Article or § 2-503, §
30 2-504, § 2-505, § 2-506, or § 3-211 of the Criminal Law Article, if within the
31 preceding 5 years the defendant has been convicted under § 21-902 of the
32 Transportation Article or § 2-503, § 2-504, § 2-505, § 2-506, or § 3-211 of the
33 Criminal Law Article, or has been placed on probation in accordance with this section,
34 after being charged with a violation of § 21-902 of the Transportation Article or §
35 2-503, § 2-504, § 2-505, § 2-506, or § 3-211 of the Criminal Law Article;

36 (2) a second or subsequent controlled dangerous substance crime under
37 Title 5 of the Criminal Law Article; or

38 (3) a violation of any of the provisions of §§ 3-303 through 3-307 of the
39 Criminal Law Article for a crime involving a person under the age of 16 years.

1 (e) (1) By consenting to and receiving a stay of entering of the judgment as
2 provided by subsections (b) and (c) of this section, the defendant waives the right to
3 appeal at any time from the judgment of guilt.

4 (2) Before granting a stay, the court shall notify the defendant of the
5 consequences of consenting to and receiving a stay of entry of judgment under
6 paragraph (1) of this subsection.

7 (f) On violation of a condition of probation, the court may enter judgment and
8 proceed as if the defendant had not been placed on probation.

9 (g) (1) On fulfillment of the conditions of probation, the court shall
10 discharge the defendant from probation.

11 (2) The discharge is a final disposition of the matter.

12 (3) Discharge of a defendant under this section shall be without
13 judgment of conviction and is not a conviction for the purpose of any disqualification
14 or disability imposed by law because of conviction of a crime.

15 (i) If an individual violates the terms of probation, any time served by the
16 individual in custodial confinement shall be credited against any sentence of
17 incarceration imposed by the court.

18 **Article - Transportation**

19 21-902.

20 (a) (1) A person may not drive or attempt to drive any vehicle while under
21 the influence of alcohol.

22 (2) A person may not drive or attempt to drive any vehicle while the
23 person is under the influence of alcohol per se.

24 (b) A person may not drive or attempt to drive any vehicle while impaired by
25 alcohol.

26 (c) (1) A person may not drive or attempt to drive any vehicle while he is so
27 far impaired by any drug, any combination of drugs, or a combination of one or more
28 drugs and alcohol that he cannot drive a vehicle safely.

29 (2) It is not a defense to any charge of violating this subsection that the
30 person charged is or was entitled under the laws of this State to use the drug,
31 combination of drugs, or combination of one or more drugs and alcohol, unless the
32 person was unaware that the drug or combination would make the person incapable
33 of safely driving a vehicle.

34 (d) A person may not drive or attempt to drive any vehicle while the person is
35 impaired by any controlled dangerous substance, as that term is defined in § 5-101 of

1 the Criminal Law Article, if the person is not entitled to use the controlled dangerous
2 substance under the laws of this State.

3 (e) For purposes of the application of subsequent offender penalties under §
4 27-101 of this article, a conviction for a crime committed in another state or federal
5 jurisdiction that, if committed in this State, would constitute a violation of subsection
6 (a), (b), (c), or (d) of this section shall be considered a violation of subsection (a), (b),
7 (c), or (d) of this section.

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 October 1, 2004.